

LAKE COUNTY BOARD of ADJUSTMENT
August 13, 2014
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Paul Grinde, Steve Rosso, Don Patterson, Frank Mutch

STAFF PRESENT: LaDana Hintz, Robert Costa, Matt Ellermann, Lita Fonda

Paul Grinde, acting chair, called the meeting to order at 4:00 pm. The July minutes were not yet completed, so approval was deferred to the next meeting.

SERRA CONDITIONAL USE—UPPER WEST SHORE (4:00 pm)

Robert Costa presented the staff report. (See attachments to minutes in the August 2014 meeting file for staff report.)

Frank asked if the deck was covered. Robert replied it was uncovered and unfinished when he saw it. Frank checked this was included as impervious surface so if it was covered, the coverage wouldn't change. Robert confirmed. It was 150 square feet so it wasn't much coverage.

Michael Serra, the applicant, offered to answer questions.

Steve referred to the limit of 8 for outdoor seating in the conditions and terms. Should there be something to specify that people may be standing to wait for food? He was concerned a neighbor might look at the conditions and say there were too many people around. It might help to clarify in the conditions that the seating was limited to 8 but additional customers might be standing, waiting for food. Michael said there was no view of where you would go for pickup unless you were driving down the road. The caboose was on roughly a half acre of property. Based on his experience, Steve thought there was a good chance that the neighborhood would be happy with the business growing. There could always be someone looking for a reason to cause a problem and he didn't want this to be a reason. Michael said if they could leave him some leeway, he'd appreciate it.

Robert said this condition was formed from the applicant's letter, which specifically stated 8 as what the seating would be outside. The nature of the business was intended to be take-out. It wasn't intended to have people sit for long. If the applicant wanted to expand, he could certainly come back and request that. Steve said he wanted to give him some leeway so he didn't have to come back to the Board. LaDana didn't think it was necessary. To go with the number of seats was consistent with the way other restaurants had been treated. The intent was for take-out, not for people staying. There was already a convenience store there where people came and went, so it was expected that people would do that. Don noted they might sit in their cars, with only one person per group up by the caboose. LaDana mentioned there were some picnic tables there now over by the store. Frank observed that #5 on pg. 13 did say it's a take-out restaurant.

Steve checked that Michael was comfortable coming back to the Board for signs. Michael asked for clarification. He planned to put a sign on the side of the caboose. Robert said the conditional use review for signs was for detached signs. If Michael was going to do a detached sign along the highway, he would need to come back and talk to Planning. Further discussion of signs ensued. Steve said they had a message board there and could advertise the caboose on the existing message board. Robert agreed.

Robert clarified that the applicant still needed to make sure he was clear with Environmental Health on the water supply, sanitation issues and getting his license.

Public comment opened: None offered. Public comment closed.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use with the findings, conditions and staff recommendations in the staff report. Motion carried, all in favor.

CJL INVESTMENTS/ SCHUELER VARIANCE—CITY COUNTY (4:15 pm)

Robert Costa presented the staff report. (See attachments to minutes in the August 2014 meeting file for staff report.) Color 8 ½ x 11 versions of the photos in the staff report were passed around. He noted the variance seems a cleaner cut way to address the property's compliance than the other alternatives.

Steve requested clarification on the application and the location of the other structure besides the house with addition and garage. Robert pointed to the location on the site plan attachment, which was submitted in 2010 for the proposed addition. No other plans had been received. He wasn't sure who marked the notes on distances and questions. There appeared to be a scale issue. Looking only at the single-family residence focus of the review today, he used the suggested scale and it appeared to be correct. It met the requirements. Steve noted the structure under discussion wasn't on the drawing. LaDana reiterated this arrived in 2010 and they'd been working with the Schuelers since that point. Steve asked about the new application for the variance. LaDana said they overlooked that it wasn't on there when they put the packet together. Steve mentioned it made it hard to look at this.

LaDana highlighted the pictures in the report showing the connections. The other house would be on the water right below the house existing on the plan. A steep staircase was between the two. Steve pointed to a drawing that said slopes of 20% and staff said 70%. LaDana said that was where they measured it from. Robert commented the structure was 20 feet above the river. Steve said there was a slope from that structure to the river. LaDana noted it was a benched lot. Steve asked if the lakeshore protection zone applied to this section of the river or if there were other setbacks. Robert said the structure was built in 1990. Steve understood. He was interested in how far it was from the river. Robert thought it was probably somewhere in the lakeshore protection zone. LaDana noted it was built prior to the zoning. Steve said it might not have been built prior to

lakeshore protection. LaDana said it happened in 1993. They couldn't do something about what happened then.

Steve asked about the discussion that this would need to be a dependent structure, without laundry and kitchen. Robert said that was based on Environmental Health requirements. Some unknowns existed there, as the sanitarian for the project was in transition. The discussion [on Environmental Health requirements] relied on whatever Environmental Health decided with the applicants. They would either have to make the structure dependent on the single-family dwelling or they'd have to get their COSA rewritten. LaDana emphasized that the dependent versus independent came from Environmental Health rather than the zoning regulations. For zoning, a guest house was a guest house.

Steve wasn't clear why the accessory apartment had to be attached to the single-family dwelling. He accepted the staff interpretation. On pg. 16 in finding A, he had a question regarding the need for a variance resulting from physical limitations unique to the lot or parcel on which the variance was requested. When the home on the upper level was built, it didn't get a permit. If it had, they would have evaluated whether the existing house could have been enlarged to get the desired living space or whether they needed a separate building in this location. Would they have decided because of the unique physical limitations, they'd allow a variance to build a second dwelling? The need for the variance seemed to result from the lack of the steps to really evaluate whether there were physical limitations.

Robert said the only way to make the property comply at present was to destroy one structure or to connect them. The connection would be difficult to do. Steve agreed. He wanted to make the findings factual. Having been to the site, LaDana said there was no way they could have expanded the lower cabin. It was built into the slope. If it was expanded, there would be more impacts to the river than what there was now. It didn't make sense to expand that. Since 2010, the applicants had been caught in a vortex between Planning and Environmental Health. The County was trying to help them get through this. They couldn't get a septic permit to get things up to speed because Planning wouldn't sign off on it. This was a way to resolve that and get it to move forward so they could get their septic permit to try to eliminate the Environmental Health issues, which were the major issues. She added that as far as accessory apartments, this zoning said it had to be within the main structure.

Steve clarified his concern was that they came to the right facts here, in order to solve this problem. In order to award this variance, [the Board] had to agree with each of the points that there was a physical limitation of the lot and that there was a new hardship, as well as points c through e (on pgs. 16-17). LaDana said they had to agree or it had to be deemed reasonable by the Board. Steve wondered if they could add something to finding A that said expansion to the original structure couldn't have been done because of physical limitations. The real reason they needed a variance now seemed to be that they built a building without a permit that didn't get reviewed at that time and there wasn't a chance to look at the alternatives. They needed to make the connection from that fact to

this idea of physical limitations unique to the lot in section a. LaDana said this was a great idea. They would need to change that finding.

Frank asked about the existing use of the structure. Robert said it appeared to be an accessory structure with living quarters, similar to a guest house. Frank commented he counted roughly 33 steps between the lower and upper structures, and there'd be more to the river. Personally, he didn't want to climb 40 steps to get to a place to rest, use the bathroom or enjoy the river. He didn't think it was unreasonable to have a little spot down there.

On the conditions, Frank suggested include a twelfth condition to update the 2010 plot plan. LaDana checked that the condition would be to ask for an updated site plan to be submitted prior to the issuance of the zoning conformance permit. Staff would issue a zoning conformance permit and that way everything would be permitted in the end. Frank agreed that was the idea.

Jim Schueler apologized for not getting the permit. He hadn't paid attention. There was no way to expand the little lower building, which was basically a sleeping area. They effectively connected the buildings with the stairway and the house was put as close to it as they could. They thought they'd done it as efficiently as they could. The lower cabin was a big sleeping area up on top and downstairs had a common space with a bathroom. It had a sink, a burner and a refrigerator. It was 410 square feet cabin. The cabin itself was at least 20 feet from the river. He was sure they went to the shoreline people and he was positive it was okay in those days. It was built in the '90's by Jim Haynal. The Schuelers owned the property at that time.

Steve asked if these two structures met the covenants per the Homeowners Association. Jim said he'd talked with them and there was not an issue. Steve asked if the covenants got changed to accept something that didn't fit and voted on by the homeowners or if the Homeowners Association granted some kind of variance to the covenants. LaDana said that was up to the Homeowners Association.

Public comment opened: None offered. *Public comment closed.*

Paul agreed with staff that this seemed like a reasonable solution. He'd been by the building on the river. It was a nice-looking little place with vegetation. It'd be a shame to require removal.

Motion made by Don Patterson to approve the variance with findings of fact, recommendations and conditions, as modified by the Board.

For the modification of the finding, Steve suggested a sentence at the end of finding A on pg. 16. The Board's sentence was, "*Alternatives to providing the necessary living space that the owners wanted would have required two structures and could not be provided by expanding the then-existing structure due to physical limitations of the lot.*"

LaDana confirmed with the Board that they wished to add a condition #12 about updating the site plan: ***Prior to the issuance of the zoning conformance permit, the site plan shall be updated to reflect the development that currently exists.***

Motion seconded by Paul Grinde. Motion carried, all in favor.

GARWOOD CONDITIONAL USE—EAST SHORE (4:47 pm)

LaDana mentioned she spoke to the Garwoods today. Something came up such that they could not be here.

Matt Ellermann presented the staff report. (See attachments to minutes in the August 2014 meeting file for staff report.)

Steve inquired about a site plan, per C.2.d.1 on pg. 5, and where the RV was located on the lot. LaDana mentioned an aerial photo and apologized that the site plan did not get in the packet. Matt showed some aerial photos and identified the proposed location. Steve asked where the proposed house would be. LaDana answered that the applicant hadn't submitted plans yet. He was working on those. They wanted to be able to start using the lot before the end of the year, while they got their plans together. Matt noted the aerial photo was taken prior to the driveway being put in. Steve was curious if the [trailer] location was on the edge of the lot so he'd have plenty of room to build, but he'd picked a spot in the middle of the lot. The applicant wouldn't want the trailer where he was going to build his house. LaDana said he would move it when he was ready to start building. Right now, that was the area they'd leveled. They purchased this lot in the last month.

Based on the conditions and terms in #5, Steve said they would still have to meet these setback requirements [if the trailer moved], so that was covered. He observed some slope but it didn't look like those were 25%. LaDana thought there might be some slopes like that on the property. The trailer wasn't on those.

Don said his question about the building location had been answered. Steve asked for clarification on sanitary restrictions. LaDana replied that sometimes when people created lots, they put a sanitary restriction on it so they didn't have to go through sanitation review. She listed some examples of reasons why people might choose to do this. To lift the sanitary restriction, they had to go through sanitation review, which was basically a DEQ approval that they had to get. Typically they had to hire an environmental consultant and go through this process. They would submit to the Lake County Environmental Health office and ultimately get approval from the State DEQ. It was a lengthy process. A two-year construction period was probably not unrealistic in this situation, considering they hadn't submitted their DEQ stuff yet or house plans.

Frank commented a 15-foot camping trailer would have no environmental impacts, although it might require marriage counseling. He gave a format suggestion to put 'findings' in a big, heavy, bold heading. Sometimes he had a hard time finding the findings as he sifted through the report. Formats sometimes varied in different reports. LaDana suggested they could use big capital letters. Frank thought that would help.

(No public left to comment.)

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use with staff recommendations, findings and conditions. Motion carried, all in favor.

OTHER BUSINESS

LaDana mentioned there were items for next month.

Paul Grinde, acting chair, adjourned the meeting at 5:03 pm.